



U.S. Department of Energy's
Office of Science

Foreign Visits & Assignments
“DOE Historical Overview”
and
**“Office of Science Perspective on Current
Status”**

**ANNUAL MEETING OF USER FACILITY
ADMINISTRATORS**

Brookhaven National Laboratory

October 27, 2003

William E. Nay
(Bill)



Message from Dr. Ray Orbach



"I believe that there is no conflict between the goals of great science and good security. We must and will do both. And the way to accomplish both is through the integration of science and security, in much the same way we are integrating science and safety. Specifically, we must ensure that ultimately, each individual scientist understands the security issues at stake, and incorporates these into the way they conduct their work."

National Academy of Science, May 13, 2002.



Drivers of Change

- **SC Restructuring**
- **Homeland Security (SECON Levels)**
- **Federal Information Security Management Act (Formerly FISRA)**
- **Government Performance and Results Act**
- **USA Patriot Act**



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Foreign Visits & Assignments “DOE Historical Overview”

1979 to 2002

“Wake up Call” to “Interim Guidance”



Emergence of Regulations on Foreign Nationals

- The lack of regulation became apparent at the time of the Iranian hostage crisis in 1979
- New regulations came out in 1983 and were reviewed in 1985 and 1988
- DOE became a focus in 1988 (GAO Audit)
- After WTC bombing in 1993 a task force was formed to create an electronic monitoring system
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- USA Patriot Act of 2001



October 1988 GAO Report

RCED-89-31, October 1988 (42 pages) “Nuclear Nonproliferation: Major Weaknesses in Foreign Visitor Controls at Weapons Laboratories.”

As a result of recommendations from this report the Department revised DOE Order 1240.2 and implemented the Visits and Assignments Management System (VAMS).



DOE Order 1240.2A, January 19, 1988, “Unclassified Visits and Assignments by Foreign Nationals

- The concerns and focus were primarily on visits by sensitive country nationals to “Weapons” laboratories. As such, the order included provisions to provide “exclusions” from the reporting requirements for the non-weapons laboratories whose work was open source research.
- Initially the Order identified the laboratories and other facilities of concern as “Sensitive Facilities,” and outlined the specific reporting requirements. As a result of the easing of relations with many countries at the end of the cold war, the Order was changed.



DOE Order 1240.2B, August 21, 1992 w/Change 1, September 3, 1992.

The primary changes included:

- Extended the time frame for a visit from 7 to 30 days.
- Eliminated the requirements for indices checks for non-sensitive country nationals. It left the option to request indices checks in some circumstances.
- Other minor changes to facilitate repetitive visits and exception requests.

A task force was established to rewrite DOE Order 1240.2B. During meetings it was clear that some modifications were needed immediately while the task force was laboring over more controversial proposals. The task force agreed to recommend the immediate changes in a notice.



DOE Notice 1240.2, November 29, 1993 was issued and modified the order as follows:

- The term “sensitive facility” was replaced with “security area” to recognize establishment of islands of security concerns. This allowed an opening up of many of the areas at the weapons laboratories. (Property Protection Areas (PPA) were not to be considered as “Security Areas” for the purpose of this Order.)
- The task force continued to work and attempted to include in the proposed new order a provision that PPAs would not be subject to the reporting requirements. All program offices agreed with a lone non-concurrence from the Office of Counterintelligence.
- On November 30, 1994, DOE Notice 1240.2 was extended due to the deadlock.
- On March 5, 1995, the sensitive country list was modified



September 1996 GAO Audit

- In September 1996, a GAO audit examined foreign visits to weapons laboratories with a focus on the recommendations that they made in the 1988 report:
 - **RCED-96-260**, Sept. 26, 1996 (11 pages). DOE Security: Information on Foreign Visitors to the Weapons Laboratories, testimony by Bernice Steinhardt, Associate Director, Energy, Resources, and Sciences Issues, before the Military Procurement Subcommittee, House Committee on National Security.

<http://www.gao.gov/AIndexFY96/abstracts/rc96260t.htm>



More GAO Reports Issued

- **RCED-97-229**, Sept. 25, 1997 (63 pages). Department of Energy: DOE Needs to Improve Controls Over Foreign Visitors to Weapons Laboratories.

<http://www.gao.gov/AIndexFY97/abstracts/rc97229.htm>

- **T-RCED-99-28**, Oct. 14, 1998 (9 pages). Department of Energy: DOE Needs To Improve Controls Over Foreign Visitors To Its Weapons Laboratories, by Keith O. Fultz, Assistant Comptroller General, before the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China.

<http://www.gao.gov/AIndexFY99/abstracts/rc99028t.htm>

- **T-RCED-99-19**, Oct. 6, 1998 (11 pages). Department of Energy: Problems in DOE's Foreign Visitor Program Persist, by Keith O. Fultz, Assistant Comptroller General, before the Military Procurement Subcommittee, House Committee on National Security.

<http://www.gao.gov/AIndexFY99/abstracts/rc99019t.htm>



Presidential Decision Directives (PDD) (Counterintelligence Requirements)

- PDD-61 (2/98) Energy Department Counterintelligence.
 - The implementation of PDD-61 has included changing the screening and the approval process for foreign scientists to DOE labs, making the laboratory Directors directly accountable for foreign visits.
- PDD-12 (8/93) Security Awareness & Reporting of Foreign Contacts.
 - Requires that employees report all contacts with individuals of any nationality, either within or outside the scope of the employee's official activities, in which illegal or unauthorized access is sought to classified or otherwise sensitive information or when the employee is concerned that he/she may be the target of exploitation by a foreign entity.



Evolution of Policy 142.1 and Notice 142.1

- On March 15, 1999, the Albuquerque Operations Office modified and eliminated the exemptions in PPAs at laboratories under their cognizance
- On April 1, 1999, Secretary Richardson extended these modifications to all DOE facilities except the unclassified laboratories. (NREL, SLAC, FNAL, PPPL, TJNAF & AMES; however, LBNL was not included)
- On July 14, 1999, Secretary Richardson issued Policy 142.1 and Notice 142.1 and rescinded DOE O 1240.2B. (Excluded all 7 previously exempted labs, to include LBNL)



Congressionally Mandated IG Audits of Export Controls

- Public Law 106-65, National Defense Authorization Act for FY 2000, section 1402, requires the President to submit an annual report to Congress, by March 30 of each year through 2007, on the transfer of militarily sensitive technology to countries and entities of concern.
- The National Defense Authorization Act further requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, conduct an annual review of policies and procedures of the U.S. Government with respect to their adequacy to prevent export of sensitive technologies and technical information to countries and entities of concern.
- An amendment to section 1402(b), in section 1204 of the National Defense Authorization Act for FY 2001, further requires that the Inspectors General include in the annual report the status or disposition of recommendations set forth in previous annual reports under section 1402.



IG Audits of Export Controls in accordance with Section 1402

- First year - an interagency review of Federal agency compliance with the deemed export licensing requirements contained in the Export Administration Regulations and the International Traffic in Arms Regulations.
- Second year - an interagency review to assess policies and procedures for developing, maintaining, and revising the Commerce Control List and the U.S. Munitions List.
- Third year - an interagency review of Federal automation programs that support the export licensing and review process.
- This Year - the requirement is to conduct an Interagency Inspection of Contractor and University Adherence to Deemed Export Controls.
(AMES Lab and General Atomics)



DOE Foreign Tracking Systems

- On March 7, 1997, Acting Secretary of Energy Charles Curtis transferred the responsibility for DOE Order 1240.2B and the Visits and Assignments Management System (VAMS) to NN. (Now SO)
- On April 1, 1999, VAMS was replaced with Foreign Access Records Management System (FARMS)
- The department modified FARMS to a web based tracking system called Foreign Access Central Tracking System (FACTS)
- On November 5, 2001, Deputy Secretary Francis S. Blake required the use of FACTS by all departmental elements
- Efforts began to bridge data from local site legacy systems to FACTS



Foreign Interaction Training Academy

In March 2001, DOE established the Foreign Interaction Training Academy (FITA) to provide training to DOE and contractor personnel for implementing policies associated with the Foreign Visits, Assignments and Travel Program (SO-30). FITA's mission is to design, develop, and implement quality training for persons responsible for activities such as the following:

- Understanding and carrying out roles and responsibilities in the area of foreign visits and assignments
- Using FACTS to process and document foreign visits and assignments
- Conducting foreign travel
- Promoting international technology transfer with foreign entities in a manner that safeguards our national security



Legislative Data Requirements

non-immigrant students and exchange visitors

- Student and Exchange Visitor Information System (SEVIS)
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Identity, current address, visa type, date of issue, academic status, and academic disciplinary actions)
- USA Patriot Act of 2001 (port of entry, date of entry)



IG Audit: “The Department’s Unclassified Foreign Visits and Assignments Program”

DOE/IG-0579 December 2002

<http://www.ig.doe.gov/pdf/ig-0579.pdf>

The administration of the foreign visits and assignments program suffered because of:

- A lack of specific policy guidance
- Problems with local implementation
- A lack of clear and quantifiable performance measures



IG Audit: “The Department’s Unclassified Foreign Visits and Assignments Program”

Departmental Response to the Report

- Issuance of Interim Guidance (12/17/02)
- Expedite the issuance of a revised FV&A Order. (142.X)
- Increase emphasis on mandatory use of FACTS
- Eliminated all exclusions



U.S. Department of Energy's Office of Science

Foreign Visits & Assignments

Office of Science Perspective
on
Current Status
of
Draft Order 142.X



Status of DOE O 142.X, “Unclassified Foreign Visits and Assignment Program”

- Major issues with the draft order were submitted in the Review and Comment System (REVCOM) by all DOE field elements
- Office of Science consolidated the input from all SC field elements and submitted them with Major Comments on October 21, 2003
- SC Senior management met with the Acting Director, Office of Security on October 22, 2003 and gave him a copy of the SC input, agreeing to work with him on resolution of the Major Comments
- The SC lead for the resolution phase is Bill Nay
- We expect a meeting on this in mid-November.



Office of Science Comments on draft DOE Order 142.x, UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM. (10/16/03)

Office of Science

- Open to the Public should be defined as: “Events, activities, or locations that are determined to be open to the general public by the hosting site approval authority, in consultation with subject matter experts (SMEs),” and therefore should be exempt from this Order.
- An off site meeting with no access controls is clearly open to the public and should be excluded.
- Completed indices checks need not be required for assignments by sensitive country foreign nationals whose access is only to fundamental research.
- The subsection on host requirements has requirements that are personal information and not related to work. These portions of the paragraph should be deleted.



Office of Science Comments on draft DOE Order 142.x, UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM. (10/16/03)

Office of Science

- The Order should require only the verification of the legal status of the foreign national visitors and should not require they be “validated,” “documented” and “maintained”
- A specific security plan need not be required for sensitive country foreign nationals whose visit or assignment includes access only to fundamental research
- The concept of access to “programs, information and technology” goes beyond the objective of this Order and should be deleted
- The section on delivery, service and vendor personnel is too restrictive and should be modified to align with the graded approach. (Construction workers should be added)



Office of Science Comments on draft DOE Order 142.x, UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM. (10/16/03)

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- The definition of National Security Assets includes "valuable government property." As this definition is both inappropriate and inaccurate, it should be deleted
- The definition of Foreign National should be consistent within DOE. The definition should be changed to read: Foreign National – A foreign national is anyone who is not a U.S. citizen by birth or naturalization, and who is not a Legal Permanent Resident (LPR)

General Comment

- Some of the requirements are described at a level of detail more appropriate for a manual or guide. In those areas where the details go beyond what should be in the Order we have recommended that they be deleted.



Prologue – SC Sites will have a Foreign Visits and Assignment Program

- The Office of Science is committed to implementation of a Graded Approach
- All SC sites will conduct some level of documentation and reporting in FACTS
- All sites have an obligation to ensure foreign nationals on their sites are in a lawful status
- All foreign nationals from countries that sponsor terrorism must receive DOE HQ Management Panel approval.
- The DOE FV&A Programs will continue to be audited by GAO, IG and OA



Foreign National Access to Cyber Systems

- Access to cyber systems by foreign nationals while on-site will continue to be subject to review and documentation in security plans as appropriate.
- Policy on remote access to cyber systems will be the responsibility of the DOE Chief Information Officer (CIO)
- The SC lead for cyber security is Susan Lister.
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William E. Nay (Bill)

“I’m from the Government, and I am here to HELP.”

Any Questions?

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